

Seasonable Reflections

On Dissolving

CORPORATIONS,

In the late Two REIGNS, by Surrendring
of, and giving *JUDGMENT* against

CHARTERS:

PARTICULARLY,

Against That of the CITY of LONDON:
Manifestly destructive to the most Ancient and Famous
Constitution of our ENGLISH GOVERNMENT.

TOGETHER WITH

The Coronation Baths

Of the *Saxon*, and Several of the *Norman* KINGS,

The OATH of a JUDGE,

AND

The OATHS of the Lord Mayor, Aldermen,
Sheriffs, Common-Council, Common-Serjeant, Town-
Clerk, and Freemen of the City of LONDON.

L O N D O N,

Printed and are to be Sold by *Randall Taylor*, near
Stationers-Hall. MDCLXXXIX.

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A

General Preface.

TH E Reader ought to be informed, that this Treatise was Written and Printed in the year 1682. whilst the Author had the honour of being engaged about this subject matter, in the service of the *City of LONDON*, which, my Lord Chief Justice *Coke* says, is, *tanquam Epitome Totius Regni.* 8. Rep. 127. b.

But upon Consideration that the Violence of those times would not permit it with safety to appear abroad in the World, he was advised not to venture out in the Storm that then raged, for fear of a Shipwrack both to him and his Vessel.

This made him keep snug in Harbour, and resolve not to put forth, so long as such a hoaming Sea lasted.

There was a Scandalous Observator, that had shameful Allowances given him by Men of Vogue and Mode in those days, weekly to divide the Nation, and to lay a Foundation of Feuds and Contentions among the People.

None, whom he and his Abettors had Predestinated to Ruine or Infamy, could escape the lashes of his Virulent Pen, but were represented to be of that Party, the Buffoon Libeller was then hired to render most Obnoxious, that so they might (according to the train laid) be born down and crushed by the Crowd, who were easily inflamed by allowed Reproaches.

And tho the Law was made at all times to give Remedy for every ill or defamatory word, which tends to the blasting of a Man's Reputation, hindrance of him in his Trade, or Profession, or breach of the Peace; yet thro' the Iniquity which then prevailed and reigned, it was become vain, I had almost said impossible, to bear up against the Torrent of foul and Sarcastical Language, by which all peaceable and good Subjects were at pleasure made, as on a Stage, the Objects of unjust Scorn and Derision.

There were then a strange sort of People among our selves, whose Zeal was as blind as it was bitter and intemperate; and whose Religion consisted chiefly in an implicate, active, *unreserved Obedience*, to the Will and Pleasure of their Prince: These, from their Excesses of a new Notion they had got of Loyalty, applauded by some that were making havock of the Government, and were erecting a new one, because they had

rendered themselves too Criminal to live under the Old ; I say, These were not to be contented, without bringing direct Slavery upon us (the unavoidable effect of Voluntary Surrenders) by destroying Charters, and the Municipal Rights of the Corporations of the Kingdom.

The sad Prospect of this resolved Phrenzy in an Obstinate Party, who then considered little, but suffered themselves through Dishonesty, or Weakness and Folly, to be fleeced out of a Sense of their true and undoubted Interest, and to be Cajoled and Wheedled into Courses, which apparently tended to their own, and the Publick Ruine ; this was the real and only Cause of the Author's being engaged in these following Sheets.

He hopes by this time all Parties have laid aside their factitious Animosities, are become wise from their own thoughts and recollections, and have recovered their understandings to a due temper, from which they have so long seemed wretchedly aliened ; and will not now take it ill to have their Judgments informed, so long as he will instruct them in nothing but in matters relating to their own peace and safety, and therein only will tell them the Truth, which usually carries with it an Irresistible force ; but though it may be clouded for sometime, yet it can never be overcome, because it always stands firm upon feet of Iron, without any Mixture of Clay.

This we have assured to us from the Preamble of an Act of Parliament, and *the Parliament is all the Realm.*

Let us then hear what the whole Realm hath long since delivered to us of the Power of Truth, and that in a Popish Reign.

2. Ro. Rep. 502.
Rast. Stat. 1. Mar.
cap. 1. Sess. 2.

' For as much as Trueth (being of her owne Nature of a most ' Excellent Vertue, Efficacy, Force and Working) cannot but ' by process of time break out, and shew her self, howsoever for ' a while, she may by the Iniquity and Frailtie of Man, be sup- ' pressed and kept close ; and being revealed and manifested, ' ought to be embraced, acknowledged, confessed and professed, ' in all cases and matters whatsoever, and whomsoever they ' touch or concern, without respect of persons ; but in such ' cases and matters specially, as

- ' 1. Whereby the Glory and Honour of God in Heaven ' (who is the Author of Trueth it self) is to be specially set ' forth. And,
- ' 2. Whereby also the Honour, Dignitie, Suretie, and Pre- ' servation of the Prince, and Ruler under God in Earth ' dependeth. And,
- ' 3. The Welfare, Profit, and Special Benefit of the Uni- ' versal People, and Body of a Realm, is to be continued ' and maintained.

This Artifice of surrendring and giving Judgment against Charters, struck at the Root of all these three, and no less in Consequence was designed by it, than the utter Destruction of our Ancient, most Famous Government, and our long enjoyed *English* Liberties.

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We used to account our selves a People happy beyond most, or rather any Nation in the World, living under a Government so rarely tempered by Law, that in it we had all the Advantages of other Constitutions.

Dr Burnet's Sermon before the House of Commons, 22 Dec. 1680. pag. 8.

As the Subjects of the King are Born to Lands and other things, so (says the Learned Commentator) are they Born to inherit and enjoy the *L A W S* of this Realm, that so every man may have an equal benefit by the Law.

Plaud. 55. b. Kitch. of Courts, pag. 4.

It is therefore called Common Right, and is a greater Inheritance to every Man, than that which descends to him, as Heir, from his Parents.

Because thereby his Goods, Lands, Wife, Children, his Body, Life, Honour, and Estimation, are protected from Injury and Wrong.

2 Inst. 56.

Thus we read, That by the Statute of *Magna Charta*, "it is Enacted, That no Freeman shall be taken, or imprisoned, or be disseised of his Freehold or Liberties, or free Customs, or be Outlawed, or Exiled, or any otherwise destroyed, nor we shall not pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. We shall sell to no Man, we shall deny, nor defer to no Man, either Justice or Right.

Mag. Char. 9 H. 3. c. 29.

By the 5 *E. 3.* "It is Enacted, That no Man should from thenceforth be attached by any Accusation, nor forejudged of Life, nor of Limb, nor in Lands, Tenements, Goods, nor Chattels seised into the King's hands against the form of the great Charter, and the Law of the Land.

5 E. 3. c. 9.

By the 25 *E. 3.* called "the Statute of Purveyours, it is Enacted, That none shall be taken by Petition, or Suggestion made to the King, or his Council, unless it be by Indictment, or Presentment of his good and lawful People of the same Neighbourhood, or by Process by Writ Original at the Common Law.

25 E. 3. c. 4.

"And that none be ousted of his Franchises, nor out of his Freehold, unless he be duly brought in answer, and forejudged of the same by way of Law; and if any thing be done against the same, it shall be redressed, and holden for None.

It is against the 28 *E. 3.* "that Any Man of what Estate or Condition that he be, should be put out of Land, or Tenement, or taken, or imprisoned, or disinherited; or put to death, without being brought in Answer, by due Process of the Law.

28 E. 3. c. 3.

"By the 37 *E. 3.* wherein the Great Charter is recited, which says, No man shall be taken or imprisoned, nor put out of his Freehold, without Process of the Law; nevertheless divers People make false Suggestion to the King himself, as well for Malice as otherwise, whereof the King is often grieved, and divers of the Realm, put in Damage, against the form of the said Charter: Wherefore it is ordained, That all they that make such Suggestions, be sent with the Suggestions

37 E. 3. c. 18.

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"stions before the Chancellor Treasurer and his Council, and
 "that they there find Surety to pursue their Suggestions, and
 "incur the same pain that the other should have had, if he
 "were attainted, in Case that his Suggestion be found Evil.
 "And that then Process of the Law be made against them,
 "without being taken or imprisoned against the form of the
 "said Charter, and other Statutes.

38 E. 3. c. 9.

And by the 38 E. 3. it is declared, "That as to the Article
 "made at the last Parliament of those that make grievous Com-
 "plaints to the King himself, It is assented, that if he that ma-
 "keth the Complaint, cannot prove his Intent against the De-
 "fendant, by the Process limited in the same Article, he shall
 "be commanded to Prison, there to abide till he hath made
 "gree to the Party of his Damages, and of the Slander that he
 "hath suffered by such Occasion, and after shall make Fine and
 "Ransom to the King. And the Point contained in the same
 "Article, That the Plaintiff shall incur the same pain, which
 "the other should have, if he were attainted, in case that his
 "Suggestion be found untrue.

42 E. 3. c. 3.

"It is likewise of the Request of the Commons by their
 "Petitions put forth in the 42 E. 3. to eschew the Mischiefs
 "and Damage done to divers Commons by false Accusers,
 "which oftentimes have made their Accusements more for
 "Vengeance and singular profit, than for the profit of the King
 "or of his People, which accused Persons, some have been
 "taken and caused to come before the King's Council by Writ
 "and otherwise, upon grievous pain against the Law: It is
 "assented and accorded, for the good Governance of the Com-
 "mons, That no Man be put to answer without Presentment
 "before Justices, or thing of Record, or by due Process, and
 "by Writ Original according to the *OLD LAW* of the Land.
 "And if any thing from thenceforth be done to the Contrary,
 "it shall be *VOID* in the *LAW*, and holden for *ERROR*.

11 R. 2. c. 10.
Vid. Sir Rob. Cott.
Abr. 1 R. 2. nu. 96.

I will name but one more. By the 11 Ric. 2. "It is Or-
 "dained and Established, That neither Letters of the Signet,
 "nor of the King's Secret Seal shall be from thenceforth sent in
 "Damage or Prejudice of the Realm, nor in Disturbance of
 "the Law.

I hope the Reader will not think himself tyred with the
 Recital of these Statutes, because they are of so near, and so
 important a Concern to every Subject of the Realm, as to the
 full Enjoyment of his Common Right; All which do prove,
 how justly the Laws are called the Great Inheritance of every
 Subject, and the Inheritance of Inheritances, without which
 Inheritance we have no Inheritance.

12 C. 64.

This Common Right is called the Law of the Subject,
 and the Judges are Sworn to execute Justice (as my Lord Coke
 says) according to Law and Custom of *England*.

The

The King's Prerogative is called Law too ; because, as it was resolved, the King hath no Prerogative, but that which the Law of the Land allows him.

Idem. 76. Judge Fen-
kin's Works, p. 131.

Britton, who was a famous Lawyer, that lived in the days of King Edward the First, calls this, *Droit le Roy*; and so likewise does the Statute of *Westminster*, the first in the fiftieth Chapter. That is to say, the King's Right, the King's Right of his Crown, or the Right of the Crown.

Cowel's Interp. tit.
Britton. Brit. p. 1.

2 *Inst.* 263.

The Common Law (says *Plowden*) hath so admeasured the Prerogatives of the King, that they should not take away, nor prejudice the Inheritance of any.

Plowd. Com. 236.

This proves the great Truth of the Year-Book, that the Law is the most High Inheritance that the King hath, as well as the Realm; for, by the Law, both He himself and All his Subjects are ruled, and that if the Law were not, there would neither be King, nor Inheritance.

19 *H. 6.* 63. a.

Therefore the King's Interest and the People's are inseparable in the Construction of Law.

The Prince is invested with a Power to see the Laws (which he hath sworn to observe and keep at his Inauguration) put in Execution.

And the Rule of his Exercise is those Laws, which are not Established without the Consent of the People.

Vid. Dr. Falkner's
Christian Loyalty, pag.
398.

To secure our Liberties, that we may have no need to fear the least Diminution of them, is not to extend the Prerogative beyond its due limits.

Lord Keeper's Speech
to both Houses of Par-
liament, 7 Jan. 1673.
fo. 9.

The Law only ought to be the Indifferent Arbiter betwixt the King and his Subjects.

The Law having distributed the King's Judicial Power to his several Courts of Justice, Judges have no Power to judge according to that which they think to be fit, but that which out of the Laws they know to be right, and Consonant to Law. Says the Lord Keeper *Coventry* in his Speech to Sir *John Finch*, at the time he was to be made Chief Justice of the *Common Pleas*.

7 *Co.* 27. a.
Calvin's Case.

16 *Octob.* 1634.

'New Opinions are many times in a Councillor retained to defend a side, but they stand not with the Gravity of a Judge. To invent, or find any thing is commendable in a Councillor, but let a Judge stand *super antiquas vias*; for *Lēx Loci*, & *Consuetudo Angliæ* is All in all.

Dr. Franklin's An-
nals, fol. 453.
2 *Col.*

'The *Debitum Justitiæ*, which is the Debt of a King primarily, by a secondary means becomes the Debt of Judges, and under as great Bonds as may be: Greater there cannot be to bind the Consciences of Men.

Idem, Ibid.
1 *Col.*

'The First Bond is *Debitum Patriæ*, due to All the King's People, whose Causes and Pleas are the proper Subjects of this Tribunal, and whose flourishing Estate depends much upon the Just Proceedings of this Court. Were there no Other Motive, yet this that prevails among the Heathen, *Amor Patriæ*, were strong enough to make Judges desirous of their Duty.

C

The

'The Second is, *Debitum Regi*, for He trusts them with his Richest Treasure, that which is Dearer than the Apple of his Eye. His Justice is One prime part of his Oath at his Coronation, *facies fieri in Omnibus Justitiam æquam & rectam*: and what you are to give the King for this, you shall need to go no further than your Oath, the Neglect of which puts you to the Will of the King, for Body, Lands, and Goods.

'The Third, the Greatest of All, *Debitum Deo*, as he is the Fountain of All Justice, and a fearful Avenger of them that do the contrary.

This was good Advice, and strictly observed (as well as taught) by our former Reverend Sages of the Law.

They religiously considered, that the Oath of God was upon them, and that they were bound to God in a full discharge of their Oath: that the Seat whereon they sat, was Gods; 'so as the Judgments that were executed, were not the Judgments of Men, but of God, and he was with them in the Cause, and in the Judgment.

They likewise well knew, that his Judges had the Custody and Guard of the King's Oath: that the Faith of a Prince was a Sacred Point, which when once blasted, could never be recovered; and therefore their great Care and Solitude was to execute Justice according to his Oath; which, as Mr. *Sheringham* affirms, next to the Glory of God, is the chief End of Government.

Although they would readily acknowledge, that the King's Commands were to be obeyed; yet they would still insist, that a Legal way was to be used, to put them in Execution.

Says *Geoffrey le Scroope*, Chief Justice of the King's Bench, if the King will command us by his Writ to do a thing which cannot be done by Law, we will not do it.

And good reason for it; for otherwise they should most wretchedly violate their own Oathes, and the Oath of the King which they have in Charge, and do what in them lies to make him believe, that Perjury is One of his Inseparable Prerogatives.

It will not be denied, that the King is entrusted with the Supreme Executive Power: but the Law of *England*, for the applying of that Power, (which it hath settled in Majesty) to particular causes and occasions, hath set down a Method, and known Rules, which are necessarily to be observed.

The Law says, The King is the Fountain of Justice; and All Justice, which is done within the Realm, is said, and said properly, to flow from this Fountain; but then it must always run in the certain and known Channels that the Law hath prescribed.

Those, who will flatter a King, that He is ABOVE the Law, do most notoriously contradict one of the first Axioms of our Regal Government, which is, that *Lex facit Regem*, and he hath

Noy, 174.

11 Co. 25.

Supremacy Asserted,
pag. 38.

Fones, 276.

1 E. 3. 26. b.

Viz. Judge Fenkin's
Works, p. 134.
Mirror, ch. 5. Sect. 1.
pag. 225.

hath originally subjected himself to the Law by his Coronation Oath.

*Occurrit Alia Adu-
latorum Turba pru-
dentia nomine commen-*

data, qui ut se in gratiam Regum insinuant illis persuadent Eos esse SUPRA leges, (& post aliqua) Nunquam in Regnis & civitatibus homines scelerati desuerunt, nec hodie desunt qui Principes Erroribus turbulentis inficiant, quibus illi quidem annumerandi sunt, qui cum se Jure-consultos existimari velint Regibus persuadent illos omnino solutos esse legibus. Oforius, lib. 5. de Regis Institutione.

This made that Famous Judge *Bracton* to say, *Rex habet superiorem, Deum scilicet, item Legem, per quam factus est Rex.*

*Bracton, l. 2. c. 16.
Fleta, l. 1. c. 5.*

And the *Mirror of Justices* informs us, that 'After the great Wars, Tribulations, and Troubles, which the Saxons had suffered for a long time, they reduced the Heptarchy into an entire Monarchy, by choosing one King to Reign over them, to maintain and defend their Persons and Goods in Peace, by Rules of Law. And (says *Horn* who wrote it) at the beginning they made the King to Swear, that he should govern his People by Law, without having regard to the person of any one; and that he should be Obedient to suffer Right, as well as his other people should be.

Mirror, ch. 1. Sect. 2.

This proves a King of *England* to be King by Law; as also that the Coronation Oath is a fundamental Law of this Kingdom, and is antecedent to the Subjects Homage and Oath of Fealty, and that our first Monarch was made so by our own Consent.

Indeed, as the Venerable Mr. *Hooker's* words are, it is impossible that any, over a whole Grand Multitude, consisting of so many Families, as every Politick Society in the World doth, should have compleat lawful Power, but by consent of Men, or immediate appointment of God, because not having the Natural Superiority of Fathers, their power must needs be either Usurped, and then unlawful, or if lawful, then either granted or consented unto by them, over whom they exercise the same, or else given extraordinarily from God, unto whom all the World is subject.

*Hooker's Eccles. Pol.
lib. 1. Sect. 10. § 86.*

Our Kings, saith he, in another place, when they are to take possession of the Crown they are called unto, have it pointed out before their Eyes, even by the very Solemnities and Rites of their Inauguration, to what affairs by the same Law their Supream Power and Authority reacheth.

Idem, lib. 8. fo. 446.

It is therefore (to call it no worse) a great Absurdity in any to affirm, that the King can be above that, by which he is made King.

This Argument, *ab Absurdo*, was made use of long ago by our Peers of this Realm, as I find it recorded in the Annals of *Burton*, in these words, *Si Rex est SUPRA Legem, tunc est EXTRA Legem, Num Rex Angliæ est EXLEX?* That is, If the King be ABOVE the Law, then he is OUT of the Law; now is the King of *England* an Out-Law?

No, but he is a Legal King, his Authority is under a Legal Extent, and as *Fortescue* says, his Power Royal is restrained by

*Fortesc. de laudibus
Legum Angliæ, cap. 9.
pag. 26. b.*

Power

Power Politick; his words are, *Potestas Regia Lege Politica cohibetur*; and this was the Law and Constitution of the Kingdom.

Bracton.

Therefore a Kings Grant of any Favour, made contrary to Law, is void, according to another Axiome of our Government, *Nihil Aliud potest Rex, &c. quam quod de Jure potest*. He can do nothing as a King, but what he can Legally do. So that it is made the very Essence of our King, to govern according to Law; for where the will governs, and not the Law, there he is no longer King; *Ubi voluntas imperat, & non Lex, ibi non est Rex*.

Idem.

Therefore the Law is to be the only Rule and Measure of his Government; and upon this account it is truly said, that a King of England can do no Wrong, nor will his Prerogative be any Warrant to him to do an Injury to any one.

Noy, 182.
1 Co. 44. b.
Plowd. 247. a.
Jenkin's Works 41.
Forsefc. c. 9. p. 25. b.
9 Co. 123. a.
Bro. abr. tit. Prerog.
n. 15: 18. 53.

He cannot by his Grant or Charter alter a Law, nor change a Law, nor alter Inheritance; for this would be wrong, which he cannot do.

Plowd. Com. 236. a.
Wyllian vers Lord
Berkley.

The King hath a Prerogative to wave his Demurrer, and plead to Issue, or to wave his Issue, and demur to the other's Plea; but then says Plowden, if he and the Party be at Issue, he cannot change his Issue any other Term, for then he may do it *in infinitum*; and the party may thereby lose his Inheritance, and therefore the Common Law will not suffer the King to have such a Prerogative.

So that we see plainly the Prerogative is bounded by the Common Law, and the King keeping firm and steady to those Rules in his Government, the Law declares, He can do no Wrong.

Not but that the King in his Natural Capacity is subject to like Infirmities, Passions, and disordered affections as other Men: but to preserve him from which the Law of God and the Land have ordained Prayers and Supplications to be made for him, that his Subjects may live peaceably under him in all Godliness and Honesty.

If the Subjects be oppressed or injured, the Magistrates, that are by Law his Eyes and Hands, must answer for it, and receive condign Punishment. Which Parliaments (instituted partly for that End) seldom fail to inflict; not fearing to question Offenders of the greatest Magnitude, and bring them upon their Knees, who unmercifully have tyrannized over their fellow Subjects, and abused to destruction the Power given them by the King, and the Laws, for Protection and Safeguard.

Several of our Judges therefore in Antient times, have vigorously refused to obey the King's Letters, and Patents, because he hath been mis-informed in them, and they have been against the Law of the Land,

Noy, 177.

These things are transmitted down to us upon Record; and why are they left? but that it may appear to the Ages following, as the Book says, what great Care those Reverend Judges

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Judges had to leave the Land and People in like Liberty to the Ages following as they found it, and so ought every Man in Conscience in his place to have the like Care.

This Confluent course of Justice between the Highest and the Lowest, maketh the Law Honourable, and the Judges and Councillors that pass this Course, to be honoured and beloved of all Men. *Idem, in Margin.*

To go in Judgment by the sure and fixed Rules of Law, as it is the best security from Error, so is it the greatest support of that Real Authority, which every good Judge must needs desire to be cloathed with, and He that acts not out of this Circle, will always find the Blessing of an inward quiet and assurance, as a Natural Effect of his Upright Justice to All that come before him.

And we have seen, that after all the Irregularities and Convulsions that have been amongst us, it hath still been found necessary to return to the Old Channel, and observe the Landmarks which our Forefathers have set us. *Dr. Burnet's Serm. ut sup. p. 8. 9.*

Those are the Good Old Laws of *England*, to which the King hath as often Occasion to resort, as the People; they being an Equal Sanctuary, and Shelter to Both. *21 Prov. 28.*

Most divinely therefore *Archytas* maketh unto publick Felicity these four steps and degrees; Every of which doth spring from the former, as from another Cause, *Hooker's Eccl. Pol. lib. 3. fo. 446.*
ὁ δὲ βασιλεὺς νόμιμος, ὁ δὲ ἀρχὼν ἀνόριστος, ὁ δὲ ἀρχόμενος ἀπόλυτος, ἢ δὲ ὅλη κοινωνία εὐδαιμόνων,
the King ruling by Law, the Magistrate following, the Subject free, and the whole Society happy. Adding on the contrary side, that where this Order is not, it cometh by Transgression thereof to pass that a King groweth a Tyrant; he that ruleth under him abhorreth to be guided by him or commanded; the People subject unto both, have freedom under neither, and the whole Community is wretched. In which respect, says the Judicious and Divine *Hooker*, I cannot choose but commend highly their Wisdom, by whom the *FOUNDATION* of the Common-wealth hath been laid; wherein though no manner of Person, or cause be unsubject unto the King's Power, yet so is the Power of the King over all, and in all limited, that unto All his Proceedings the *LAW* it self is a Rule.

The Officers and Ministers of the King are to serve him according to the Laws and Statutes of the Realm.

These Laws and Statutes have all along taken care to preserve the Rights and Privileges of this most Renowned and Antient City of *LONDON* (the *Caput Regni*, as *Math. Paris* calls it) inviolable. *Mat. Paris.*

And the Great thing laboured for in the following Sheets, was the Established Government and the Laws, and to keep (as the words of the Statute are) the Antient Policies of this Noble Realm from being dissolved and unjointed. *Rap. Stat. 7 E. 6. cap. 12.*

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He has therefore proved from several Acts of Parliament, that it hath been the great Care of the Government in All Ages to preserve the City of *London*.

These Acts are as so many Open Declarations of the Immortality of it, and of all other Corporations.

Groz. de Jure B. & P.
l. 2. c. 9. Sect. 10.
21 E. 4. 13. a.

Hook. Ec. Pol. l. 1.
Sect. 10.

Hugo Grotius tells us plainly, *Civitates esse Immortales*, the Mayor and Sheriffs may die, and be changed; but so cannot the Commonalty: And the Venerable *Hooker* is of the same Judgment too; for, says he, 'Corporations are Immortal; we were then alive in our Predecessors, and they in their Successors do live still.'

The Judges in former times did always use to show a Greater Indulgence to the Antient Liberties, and free Customs of the City of *LONDON*, than to any other Corporation in the Kingdom, and that because it was *LONDON*.

Davie's Rept. in Pref.

37 H. 6. 22. b.

4 E. 4. f. 41. a.

No Judges in any State or Kingdom under the Sun, have more revered the Opinions and Judgments of their Predecessors, than the Judges of *England* have ever done, as may be noted by the memorable Saying of *Askue*, 37 H. 6. f. 22. *Such a Charter hath been allowed in the time of our Predecessors, who were as Sage and as Learned as we be*; And of *Markham*, 4 E. 4. fo. 41. *It is good, saith He, for us to do as it hath been used in former times: ---the former Precedents are enough for us to follow.*

38 E. 3. 1. a.

And saith another Judge, *We will not change the Law which always hath been used.*

2 H. 4. 24. b.
1 Inst. 282. b.

Nay, Another goes further, *It is better, says he, that it be turned to a Default, than the Law should be changed, or any Innovation made.*

All Innovations are of dangerous Consequence, and therefore ought at all times by the Judges more especially to be avoided.

For every Innovation, is, (so far at least) an Overthrowing of the Fundamental and Antient Laws of the Kingdom; and Those that have offered to trample them under their feet, have seldom fail'd finding in the End, that Those Laws have proved hard enough to break their Necks, or to make them branded Examples of Shame and Infamy to all Posterity.

You will find instances hereof in the following Discourse, and therefore one will be enough to insert here.

Rot. Parl. 11 R. 2.
Part 1, 2, 3.

Knyghton de Eventib.
Angl. fo. 2963, 2964,
2965. 2726, 2727.
2728.
Rushw. Collect. lib. 2.
Vol. 2. fo. 260, in the
Appendix.

In the 11 R. 2. *Trefilian*, and five Judges more, with one of the King's Serjeants at Law, and one of the King's Council at Law, for delivering their Opinions, That the King might avoid a Statute, Ordinance, and Commission, which had been made for the Safety of both King and Kingdom in the last Parliament, by the Peers and Commons of the Land, with the King's Assent (tho' the Court Adulators pretended it was by force extruded from him) I say, these Eight Persons, for their extravagant, illegal and extrajudicial Opinions, were Executed, as *FALSE TRAITORS*, by a Judgment (Paramount Any to be given

given by the Judges in *Westminster-Hall*, for it was) from the most Supream Court of Judicature in the Kingdom, viz. The Parliament.

Therefore anciently when any Causes have judicially come before the Judges in their Courts at *Westminster*, that have been either of great Difficulty in themselves, or of great and concerning Import to the whole Nation, Those Judges would not presume to give any final Resolutions in them, but thought it their bounden Duty, as well as their Wisdom, to refer them over to the next Parliament, and there humbly to offer them to the Parliament's Consideration, for them to determine, and settle them.

Thus they did in the Case of 2 E. 3. in the Year-Book; The Lawfulness of a Patent granted by King *Edward* the First to the Men of *Great Tarmouth*, &c. being in question in the King's Bench, the Patent was demurred to, as being granted against Law; and after it had long depended in that Court, it was adjourned into Parliament, for the mighty Weight and Concernment of it.

Term. *Hillar.* 2 E. 3.
fo. 34. Pl. 19.

So by the Statute of 25 E. 3. *De Proditionibus*, is declared in certain particular Cases, what Offences shall be taken to be Treason, with this Restriction, (says my Lord *Coke*) that if any other Case supposed to be Treason, should happen before any Justices, the Justices should tarry without going to Judgment of the Treason, till the Case be shewed before the King and his Parliament, whether it ought to be adjudged Treason, or other Felony.

3 *Inst.* fo. 1.
2 *Inst.* 590.

Many other instances might be produced to shew, that where Judges had before them matters of Doubtfulness, or of General Consequence, they would still adjourn them over to Parliament, as being above their Cognizance and Jurisdiction, and only worthy to receive Judgment from the Supream Legislative Power of the Nation.

This no Judge could be Ignorant of, who has (I do not say perused the Rolls of Parliament, where infinite Presidents are to be found of Adjournments to ensuing Parliaments, but who has) only consulted *Henry de Bracton*, a Learned Judge in H. 3. time, for he tells us, *si Aliqua Nova & inconsueta emerferint, quæ nunquam prius evenerint, & Obscurum, & difficile sit eorum Judicium, tunc ponantur Judicia in respectum usq; ad Magnam Curiam, ut ibi per Concilium Curiae terminentur*; that is, If any New and Unusual Cases happened, that had never come before, and the Judgment was obscure and difficult, let those Judgments in respect thereof be adjourned to the *Great Court*, there to be resolved and decided. And this agreeth with our Books from time to time.

Bracton, lib. 1. cap. 2.

2 *Inst.* 408.

Nay in Cases of less Consequence, that have risen upon a point before the Judges, how an Act of Parliament was to be construed and expounded; They have thought it necessary to recur to the Parliament for them to explain the sense and meaning

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ing of their Own Acts, before ever they would venture to interpret and declare it.

14 E. 3. c. 6.

Thus the Statute of 14. E. 3. Enacts, that no Proceſs ſhall be annulled or diſcontinued by a Clerk's miſtaking in Writing one ſyllable, or one letter too much or too little, but as ſoon as perceived, it ſhall haſtily be amended.

40 E. 3. f. 34. b.

Upon which Statute a great doubt aroſe, in the 40. E. 3. whether a Word might be amended, becauſe the Statute does not expreſſy provide for it; and the Judges were not ſatisfied to meddle in it, before they went to the Council, and demanded of them who made the Statute, how they would pleaſe to declare their Opinion; which was, that it might be amended.

Bro. Abridg. tit. Amendment, nu. 18.

8 Co. f. 158. a.
Blackmores Caſe.

Note, ſays my Lord Coke, where it is ſaid in 40. E. 3. that the Juſtices went to Council, it appears by the 39. E. 3. that they went to the Parliament, to learn their Opinions who made the Law.

By all which it appears, how very ſcrupulous and tender our Judges in ancient times were, of tranſgreſſing the bounds of their Legal Authority; and what a Juſt fear they had upon them, of breaking the Law, or an Act of Parliament.

It would have been no Diſparagement, if ſome of our later Judges would have took the caution, to have trod in the ſteps of their Wiſe and Reverend Predeceſſors.

Raſt. Stat. 7 E. 6.
cap. 12.

Then would not this Decayed Houſe of the Commonwealth have ſuffered ſo much Violation and Ruine as it has, by Exile of Juſtice in the time of their late evil Government.

They would never have attempted to have delivered ſuch an Extravagant Judgment againſt the City of London; that upon the Abufe or Miſuſe of a Truſt, the very Corporation, or the Being of a Body Politick, which (Chief Juſtice Pigot ſays,) is but a Name, that cannot be ſeen, and is no ſubſtance, ſhould be forfeited, determined and diſſolved. For,

21 E. 4. 13. b.

1. This was a Caſe before them that was *Primæ Impreſſionis*, ſo that they could receive no light from any Authorities or Precedents in any of our Law Books, to guide and direct their Judgments in it.

The Notion of diſſolving a Corporation by a Judgment in Law was ſuch an Extravagance, ſuch a ſtretch of Fancy, as had never entered into any man's head before.

'Twas all Chimerical, Phrenzical, Unintelligible, Incomprehenſible to every one, but to thoſe Learned Oracles of the Law that the late Years of this Age have been bleſt with.

Otherwiſe ſure it would very well have become them, to have humbly ſubmitted it to the Judgment and Deciſion of a Parliament. But,

2. This was a Caſe, not only of dark Learning, but of the greateſt Conſequence that ever till then came into Judgment in *Weſtminſter-Hall*, for the Intereſt of the whole Kingdom was concerned in it. Not only the Fate of London, but of all the Corporations

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Corporations of *England*; nay, of the very Constitution and frame of the Government it self, did in a great measure depend upon the Resolution of it.

One would have thought therefore, that a Case of such mighty Difficulty, and of such infinite Importance in its Issue and Effect, might have given sufficient Caution to a Court of King's Bench, not to have dared to proceed to Judgment upon it, but to have adjourned a Case which affected All the People of Legal Interest in the Kingdom, to be determined by Those who are the Only proper Judges to determine it, I mean, the Court Sovereign of the Kingdom.

But it may possibly be pretended, That this was a Case which extremely affected the King and the Government, and a thousand Inconveniencies might have happened, if they should have stay'd Judgment, till the King, (who is sole Judge of the properest Season,) had in his Princely Wisdom thought fit to issue out his Writs of Summons for the meeting of a Parliament; And therefore to prevent the hazard of such Inconveniencies, there was a pressing Necessity upon the Court to deliver their Judgment.

Objection.

This may perhaps be a Pretence, but it is a very unwarrantable One, and such, with submission, as seems no ways difficult to be answered. For,

Answer.

1. Inconveniencies must not prevail with Judges to break their Oathes, and overturn the Laws; for nothing has so great Inconveniency in it as this has; These being but partial, and this a total Inconveniencie. Besides,

Sir Geo. Mackenzie's Jus Regium, pag. 82.

2. The Government has always taken Care to prevent such Inconveniencies, by ordaining that Parliaments should be often holden, so that whatever may be alledged, there could be no real Necessity for their taking upon them a Province which cannot be justified belonged to them, but was a manifest Usurpation and Encroachment of a Right, which belonged to a Superiour Jurisdiction.

Thus King *Alfred*, or *Alured*, did ordain by Authority of Parliament, That for ever twice a Year, or oftner, if need were, in time of Peace a Parliament should be holden at *London*, *Pur Parlamenter sur le guidement del People de Dieu, coment gent's se garderont de pecher, viveront in quiet, reciveront droit per certain Usages, et Saints Judgments.*

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In a Letter sent to the Pope in the Reign of *E. 1.* we read, That a Parliament was accustomed to be held in *England* about *Easter* every Year.

Rot. Claus. 3 E. 1. in Schedula.

In *E. 2.* Reign, Upon complaint that divers Persons were aggrieved by the King's Ministers, against Right, of which Grievances they could have no Remedy, but by Parliament, it was ordained, That the King should hold a Parliament once a Year, or twice, if need were.

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They would never have attempted to have delivered such an Extravagant Judgment against the City of *London*; that upon the Abuse or Misuse of a Trust, the very Corporation, or the Being of a Body Politick, which (Chief Justice *Pigot* says,) is but a Name, that cannot be seen, and is no substance, should be forfeited, determined and dissolved. For,

1. This was a Case before them that was *Primæ Impressionis*, so that they could receive no light from any Authorities or Precedents in any of our Law Books, to guide and direct their Judgments in it.

The Notion of dissolving a Corporation by a Judgment in Law was such an Extravagance, such a stretch of Fancy, as had never entered into any man's head before.

'Twas all Chimerical, Phrenzical, Unintelligible, Incomprehensible to every one, but to those Learned Oracles of the Law that the late Years of this Age have been blest with.

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Rot. Parl. 5 E. 2. nu. 29. Sir Rob. Cotton's Records, fol. 1.

4 E. 3. C. 14.
36 E. 3. C. 10.
Cott. Rec. 50 E. 3.
nu. 177.

Cott. Rec. 1 R. 2.
nu. 95.
2 R. 2. n. 4.

Mr. Pollexfen's Argu-
ment upon the Quo
Warranto against the
City of London.

So likewise was it Enacted in E. 3. Reign, two or three several times, That a Parliament should be holden at least once a Year.

And to name no more, it was twice Enacted in the Reign of Richard 2d, That a Parliament should be yearly holden in Convenient Place, to redress delays in Suites, and to end such Cases as the Judges doubted of.

This was the End for which such constant Provision was made, for the Parliament's frequent meeting; that so the Judges might make their Applications to them, upon Cases of Difficulty depending in the Courts of *Westminster-Hall*, and which were not fit for them to determine; but especially when they were of such Universal Consequence to the whole Nation, as this of the Corporation of *London* was.

That Great and Learned Man, Mr. Pollexfen, to whom all the Unbaffed World pays a just and deserved respect for his Essential Knowledge of the Law, in his Elaborate Argument upon this Case, says, 'It was a Point of as great Consequence as ever came to that Bar, as if *Magna Charta* it self were at stake; for he saw no Reason why all the Corporations in *England* will not be forfeited, as well as *London*; and, says he, what a vast part of *England* is concerned in the Corporations of *England*! — If Corporations are forfeitable for abusing their Corporation, as well Ecclesiastical as Civil, Archbishops, Bishops, Deans and Chapters, Parsons, Vicars, Universities, Colledges, Hospitals of All sorts, all the considerable Cities, Towns, and Boroughs in *England*, all are under the same position for ought I perceive.

'Nay, The very frame of the Government will be concerned. For one of the Estates of the Kingdom, to wit, the Commons in Parliament, I may call them so, (says he,) our Books do so, consists of Knights, Citizens, and Burgeffes sent to Parliament to represent the Commons, and I think three parts of four of the House, are Citizens and Burgeffes who are usually chosen by the Freemen of the Cities and Corporations, or otherwise where they are not chosen by the Freemen, yet their Elections are generally under the Influence and Power of those that are Magistrates in those Cities and Towns, or of the Body Politick, and the returns made by them.

For as he goes on, 'If this should turn to be a forfeiture by the miscarriage and Abuser of the Liberty of a Corporation, I do not know very well how many Corporations at this day are no Corporations, then if they are no Corporations, who shall send Burgeffes, who shall send Citizens?

'Then let us consider the Influence this must needs have over all the Elections for that great Assembly, and how far it concerns that Assembly upon those Statutes and Provisions that have been made for Elections, that they shall be free, and not under danger, but that Men may give their Votes according as their own discretions and understandings may lead them.

This

This I have made bold to transcribe from his Argument which I have in Manuscript.

To which I shall superadd a Statute of *Richard* the Second, that every Person to whom it belongeth, shall upon Summons come to the Parliament; The words are these:

“ *Item*, The King Will and Commandeth, and it is assented in 5 R. 2. St. 2. cap. 4.
 “ the Parliament by the Prelates, Lords, and Commons, That
 “ all singuler Persons and Communalities, which from hence-
 “ forth shall have the Summons of the Parliament, shall come
 “ from henceforth to the Parliaments in the manner as they be
 “ bounden to do, and hath been accustomed within the Realm
 “ of *England* of **Old times**. And every Person of the same
 “ Realm, which from henceforth shall have the said Summons
 “ (be he Archbishop, Bishop, Abbot, Prior, Duke, Earl, Baron,
 “ Banneret, Knight of the Shire, Citizen of Citie, Burgeis of
 “ Burrough, or other singuler Person, or Communaltie, do
 “ absent himself, and come not at the said Summons, (except
 “ he may reasonably and honestly excuse him to our Sovereign
 “ Lord the King) he shall be amerced, and otherwise punished,
 “ according as of **Old times** hath been used to be done within
 “ the said Realm in the said Case. And if any Sheriff of the
 “ Realm be from henceforth negligent in making his return of
 “ Writs of the Parliament, or that he leave out of the said re-
 “ turns any Cities or Burroughs, which be bound and of old
 “ times were wont to come to the Parliament, he shall be pu-
 “ nished in the manner as was accustomed to be done in the
 “ said Case in the said time past.

And having thus shewn the Right of Summons, and coming to Parliament, the next work is to prove, that it hath been accustomed of old times to have free Elections; and this will be made clear from a Chapter in the Statute of *Westminster* the First, and my Lord *Coke's* Comment upon it.

Sayes the Statute, “ And because Elections ought to be free, Westm. 1. 3 E. 1. cap. 5.
 “ the King commandeth upon great forfeiture, that no Great
 “ Man, nor other, by force of Arms, nor by Malice, or Me-
 “ nacing shall disturb any to make free Election.

I must previously observe here, That though it be said, *The King commandeth*, &c. this is not to be understood as a meer Emanation of Royal Favour, or New Bounty granted, which the People could not justly challenge, or had not a Right unto before; for this was a **Fundamental Law** and **Libertie** of *England*; No new Freedom was hereby granted, but a Restitution of such a One as the People of this Kingdom had lawfully before; and it was to free them from what had been usurped and encroached upon them by any Power whatsoever.

This was One of the Liberties that was confirmed to them Mag. Charta. 9 H. 3. cap. 9.
 above a Hundred Years before, by the Ninth Chapter of *Magna Charta*, which says, “ The City of *LONDON* shall have all the
 “ Old Liberties and Customes, which it hath been used to have:

And

And besides this, it goes on with a "Moreover We will and grant, That All other Cities, Boroughs, Towns, and the Barons of the Five Ports, and all other Ports, shall have all their Liberties and free Customes.

Liberties are here taken for Privileges, such as (my Lord Coke says) of Right the People had before, and this Chapter was a Declaration of one Principal and Fundamental Law of England.

But to digress no longer from my Lord Coke's Comment upon the before recited Chapter of *Westminster* the First.

2 *Instit.* 169.

He bids us "see the Statute of 7 H. 4. that Knights of Shires for the Parliament shall be chosen *libere & indifferenter*, *sine prece, aut precepto*.

"There were two Mischiefs before the making of this Statute.

"1. For that Elections were not duly made.

"2. That Elections were not freely made.

Regula.

7 H. 6. 12. a.

"And Both these were against the Antient Maxime of the Law, *Fiant Electiones rite & libere sine interruptione aliqua*; and again, *Electio libera est*; for before this Act in the Irregular Reign of H. 3. The Electors had neither their free, nor their due Elections, for sometimes by force, sometimes by Menaces, and sometimes by Malice the Electors were framed, and wrought to make Election of Men unworthy, or not eligible, so as their Election was neither due, nor free: this Act briefly rehearseth the old Rule of the Common Law (for that Elections ought to be free) wherein both the said Points are included, 1. It must be a due Election; and, 2. It must be a free Election.

"This Statute doth Enact, That no Man upon grievous forfeiture shall disturb any to make free Election, and is excellently Penned in two respects:

"First, For that generally it extendeth to all Elections, that is to say, to every Dignity, Office, or Place Elective, be it Ecclesiastical or Temporal, of what kind or quality soever.

Westm. 2. 13 E.I.C.I.
2 *Instit.* 332.

"Secondly, The Act is Penned in the Name of the King, viz. The King commandeth; and therefore the King bindeth himself not to disturb any Electors to make free Election, as in the like case upon a Statute made in the Reign of the said King; the Act saying, *Rex perpendens*, &c. the same bound the King. Now that Electors might make free and due Elections without displeasure or fear thereof, by this Act of Parliament, as a sure defence, the King commandeth the same upon grievous forfeiture: And this Act extends to all Elections, as well by those that at the making of this Act had Power to make them, as by those whose Power was raised, or created since this Act.

"Grievous Forfeiture.] That is, the Disturbers to be punished by grievous Fines and Imprisonment. Thus far my Lord Coke.

But now if Corporations can be surrendered, or forfeited, it is a very easie matter in a short time to put the whole Frame

Frame of the Government into the Hands of the Crown, and thereby to make the King of *England* as Absolute in his Power, as the most Absolute Monarch in the World.

For First, as for the Lords Temporal, cannot the King, who by the Law is made the Fountain of Honour, make at any time as many Peers as he pleases, and under what Distinction of Characters he shall think fitting? Nay, if it be true what Dr. Brady and others have asserted, viz. 1. That Antiently Kings Summoned to Parliament what and which Barons they pleased, 2. That the *Barones Regni* were called to Parliament at the Kings pleasure, 3. And that *Henry III.* Appointed and Ordained, that all those *Earls* and *Barons* of the Kingdom of *England* to WHICH he thought FIT to direct Writs of Summons, should come to his Parliament, and NO OTHERS; unless by CHANCE the King would direct other such Writs to them.

Dr. Brady's full and clear Answer p. 226. in Margine, id. 227. in Margine.

ibid. in lib.

Or as Dr. Johnston affirms in his Book, Entitled, *The Excellency of Monarchical Government*, &c. That by the Statute of *Marleburgh*, 52 H. 3. It is evident, that even all the Great Barons were not Summoned, but only the more discreet, and such as the King thought fit to call.

Dr. Johnston, ch. 26. fo. 226.

Or, what Sir Robert Filmer, Baronet, assured the World long ago from Mr. Camden, who (he says) speaking of the Dignity of Barons, hath these Words: King *Henry III.* out of a great Multitude which were Seditious and Turbulent, called the very Best by Writ or Summons to Parliament; for He, after many Troubles and Vexations between the King himself, and *Simon de Montfort* with Other Barons; and after appeased, did Decree and Ordain, that All those Earls and Barons unto whom the King himself vouchsafed to direct his Writs of Summons should come to his Parliament, and No Others: But that which he began a little before his Death, *Edward I.* and his Successors constantly observed and continued, &c.

Sir. Rob. Filmer's Grand Enquest p. 18, 19.

Vid. Goddard's Plato's Dæmon 2d discourse p. 70. to the same purpose.

And, (to name no more) what the late Learned Knight, Garter Principal King of Arms, Sir William Dugdale has told us, that by the Records of the Summons of the Lords Temporal in *Edward I.* time, and after, it is not unworthy to be Noted, that some were never called above once, some twice, or more times, some during their Lives, but not their Discendants; as also that the Husbands of Sundry heirs Female, had Summons by the Title which the Ancestors of such heirs Female enjoyed; so likewise in the Case of Coheirs, the Husbands of which of them the Sovereign pleased to Honour therewith, and his Discendants by her.

Sir William Dugdale's Summons of the Nobility to the Great Councils and Parliaments of this Realm in pref.

I say, if All this be true, as these Learned Gentlemen have so positively declared, May it not be very Easie for the King by this means always to have an Over Ballance on his side: so that this Estate he can make his Own at Pleasure.

Secondly, Nor is his Work more difficult as to the Spiritual Lords, they being so many distinct Corporations; and in their Spiritual Capacities they own themselves not to be In-

liable, but subject to Errors in their Actings, as other Natural persons are; and therefore, under the same Rule of Law, to be forfeit, and determin'd, and by Consequence to have their Ecclesiastical Corporations totally dissolved: Or else they may through Fear or Favour be prevailed with to surrender their Bishopricks into the Kings hands, and then he can put in whom he pleases into their Room, and who he is sure will comply with his Measures. And what becomes then of the Spiritual Estate in Parliament? Will not that be too at the Mercy, Pleasure, and Disposal of the King?

So that we see, if Corporations be surrenderable or forfeitable, how easie a matter it is, for the King when he pleases, to make himself Absolute Master of his Upper House of Parliament.

And can he not likewise, by this New Court Doctrine, or Law of *Westminster Hall*, as easily gain the Ascendant over the Lower House?

By this Artifice of Surrendring, or Judgmenting to forfeiture, the Corporation of the City of *LONDON*, all the Cities, Burroughs, and Towns Corporate of *England*, would quickly have been brought into as great Subjection to the Controul of *White-Hall*, as Any of the Cities and Burroughs of *France* are to the Grand *Lewis* at *Versailles*; and then a Dismal Farewell to our *ORIGINAL* Constitution and Government.

I must beg leave here to make a small Digression; for I confess it is not directly consequential on what is just above Mentioned; but it shews (if it be true) that the King's Prerogative over the Members of the House of Commons to attend or serve in Parliament, is very Considerable, and that by it he may easily Mould a Lower House to be perfectly under his Obedience, and so far I think it will come up to my purpose.

The Kings Supremacy asserted p. 50.

Says Mr. *Sheringham*, Parliaments as they are now Established, consisting of three Estates, the King, the Lords and Commons, are but of late Existence; and therefore such a Composition and Mixture of the said Estates cannot be by *Original Constitution*.-----

Id. p. 51.

It is granted that the Commons were sometimes called to such Consultations, but that was a thing not Necessary, or Frequent, but Rare, Arbitrary and Contingent. There were no certain Persons designed by *Law*, whose concurrence was required to constitute a Parliament, but the King used the Advice of those only which he pleased to call unto himself, which were always such as He thought most able to Counsel and Direct him, in the matters that were to be consulted of, and whose assent was likely to add most Credit and Estimation to the Laws that were to be divulged.

Plato's Dæmon. p. 73.

And says Mr. *Goddard* very Positively, so great was the Authority and Prerogative of our Kings over the House of Commons according to their *Old Constitution*, that they have in their Writs of Summons *Named and Appointed the Particular Persons*

Persons all over *England*, who were to be returned to their Parliaments: sometimes have ordered, That *only One Knight* for the Shire, and *One Burges*s for a Corporation, should be sent to their Parliaments, and those also *named to the Sheriffs*, and sometimes more; as may be seen by the very Writs of *E. 2.* and *Edw. 3.*

So that here is a very ready way laid down for any King to command what House of Commons he pleases. But once more.

It is Asserted by *Dr. Brady*, That the King and his Council were Judges whither, and when Burgeses ought to come to Parliament. *Dr. Brady, ut supra, pag. 79.*

That King *Edward I.* was not confined to a certain Number of Knights. *Id. p. 231.*

That a Precept was directed to the Sheriffs to send again such Members as left the Parliament, or to choose others in their stead. *Id. p. 239.*

That sometimes only one Burges was Summoned; sometimes two Burgeses. *Id. p. 242. 244.*

And but one Knight for a County, when two Burgeses, &c. *Id. p. 246.*

One Knight for a County, one Citizen for a City, one Burges for a Burgh, and those named to the Sheriff. *Id. p. 249.*

And that one Knight was discharged by the King, because he was a *Banneret*, and a Writ was directed to the Sheriff to choose another. *Vid. 5 R. 2. St. c. 4. in fol. 15. Id. p. 251.*

Now if these be not true (as most certain they are not) 'tis fit that those who have advanced such pernicious and destructive Notions to this part of our constitution, should be made to retract them, if not to profess their Repentance in Instances that may be as visible and edifying, as their insufferable juggling with Records and Historians has been publick and notorious.

And whereas there are many Burroughs in *England* which are not Corporations, but yet send Burgeses to Parliament, and have a prescriptive Right to do it by popular Elections; yet, *to ease the King of labour, and not to deprive him of Power*, the Flatterers and Advancers of Prerogative have found out a New Project to get the Crown an Over-balance in the Lower House, and that is, by the King's incorporating several of such Boroughs by Charters, and in those Charters, by vertue of his pretended *Sovereign Authority, and absolute Power without reserve*, to limit the Elections to a few, and such who were mentioned in the very Charter of creating them a Corporation; and in succession only to such a Number as was therein appointed, and to exclude all the other antient and prescriptive Electors; which was a Notorious Violation of the Rights and Liberties of the Subject, and directly contrary to the aforementioned Statutes of *5 R. 2.* and the 5th Chapter of *Westminster 1.* so that even by this way the Crown in a short time must unavoidably have had the disposal of the Majority of the Members of the House of Commons. *Hob. 1461.*

5 R. 2. St. 2. cap. 4. Westminster. 1. cap. 5.

But

The Case of *Dun-*
gannon in Ireland.

Hob. 14, 15.

Vid. 12. Co. 120.

2^d Ro. Abr. 197. n. 5.

27 H. 8. c. 26.

Pult. Stat. fol. 219.

But besides this, there was another way found out of exalting Power, viz. to create New Burroughs by Charter, and in them likewise to limit Elections to a few; this was obtained in a Compliment of Loyalty, (and out of a profound Obedience to those that understood very well how to gratifie and reward it,) by the extrajudicial Opinions of Judges, which ought to have been by Act of Parliament, as may appear from the 27 *H. 8.* enabling the several Counties, Boroughs and Towns in *Wales* to send Knights and Burgeses to Parliament.

The words of the Statute are, "And that for this present Parliament, and all other Parliaments to be holden, and kept for this Realm, one Knight shall be chosen and elected to the same Parliaments for every of the Shires of *Brekenoke, Radnor, Montgomery, and Denbigh*, and for every other Shire, with in the said Countrey or Dominion of *Wales*: and for every Burrough being a Shire-Town within the said Countrey or Dominion of *Wales*, except the Shire-Town of the County of *Mereoneth*, One Burges; and the Election to be in like manner, form and order, as Knights and Burgeses of the Parliament be elected and chosen in other Shires of this Realm. And that the Knights and Burgeses, and every of them, shall have like Dignity, Preeminence and Priviledge, and shall be allowed such Fees as other Knights of the Parliament have, and be allowed, &c.

34 & 35 *H. 8.* cap. 13:

And so likewise from the 34. and 35. of *H. 8.* concerning the County Palatine of *Chester*, which Enacts, That "it shall have two Knights for the said County Palatine, and likewise two Citizens to be Burgeses for the City of *Chester*, to be elect and chosen, Process to be awarded by the Chancellor of *England* unto the Chamberleyn of *Chester*, his Lieutenant or Deputy for the time being. And so like Process to be made by the said Chamberleyn, his Lieutenant or Deputy to the Sheriff of the said County of *Chester*: and the same Election to be made under like manner and form, to all intents, construction and purposes, as is used within the County Palatine of *Lancaster*, or any other County and City within this Realm of *England*: which said Knights and Burgeses, and every of them so elected and chosen, shall be returned by the said Sheriff into the Chancery of *England* in due form; and upon like pains as it is ordeined, that the Sheriff or Sheriffs of any other County within this Realm, should make their return in Case like. And which said Knights and Burgeses, and every of them so elected and returned, shall be Knights and Burgeses of the Court of Parliament, and have like Voice and Authority, to all intents and purposes, as any other the Knights and Burgeses of the said Court of Parliament, have, use, and enjoy. And in likewise shall and may take All and Every such like Liberties, Advantages, Dignities, Priviledges, Wages, Fees, and Commodities, concerning this said Court of Parliament,

"to

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“to all intents, constructions, and purposes, as any other the
“Knights and Burgeses of the said Court, shall, may, or ought
“to have, take, or enjoy.

Thus of right we see it belongs only to the Legislative Power of the Nation, to ordain Burroughs to send Burgeses to Parliament: but our Courts of Justice have been infected with New Notions and Schemes of Government, started and invented by fawning Minions, Parasitical Favourites, and Mercenary Scribes; and our Judges have been disposed to receive them through their Ignorance of our Antient Government, and unacquaintedness with Records.

But to return from whence I have digressed. By this late hatched Invention of getting Surrenders of and Judgments against Corporations, it is Impossible but that the King should quickly have a House of Commons absolutely at his Service and Devotion; and this can never be denied me, if the Reader will but look over the two Orders I have here subjoined, that the King was pleased to issue forth the same day with his Gracious Proclamation, for restoring Corporations to their Antient Charters, Liberties, Rights, and Franchises. The Orders follow.

At the Court at *WHITE-HALL*

the 17th Day of *October*, 1688.

*An Order of the King
in Council. 17th October,
1688.*

P R E S E N T,

The KING's most Excellent Majesty,

His R. H. Prince George of Denmark,

Lord Chancellor,

Lord Privy Seal,

Duke of Hamilton,

Marquis of Powis,

Earl of Huntingdon,

Earl of Craven,

Earl of Berkeley,

Earl of Moray,

Earl of Middleton,

Earl of Melfort,

Earl of Castlemain,

Viscount Preston,

Lord Godolphin,

Mr. Chancellor of the Exchequer,

Master of the Rolls,

Lord Chief Justice Herbert,

Sir Thomas Strickland,

Sir Nicholas Butler,

Mr. Petre.

WHEREAS in the Charters, Patents, or Grants made to several Cities, Burroughs, and Towns Corporate, a Power is reserved to his Majesty by his Order in Council, to remove, displace and discharge the Mayors, Sheriffs, Records, Town-Clerks, Aldermen, Common Council-men, Assistants, Officers, Magistrates, Ministers, Freemen, and other Members of the same. His Majesty is this Day in Council pleased to Order, and it is hereby ordered accordingly, that

G

All

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All Mayors, Sheriffs, Recorders, Town-Clerks, Aldermen, Common Council-Men, Assistants, Officers, Magistrates, Ministers, Freemen, and other Members of the said respective Cities, Burroughs, and Towns Corporate, which have or claim such Offices or Places by Charter, Patent, or Grant from the late King of blessed Memory, or from His Majesty since the year 1679. Except such Cities and Towns in His Majesty's Proclamation named, (whose Deeds of Surrender are inrolled, or against whom Judgments in Quo Warranto are entred) be removed, displaced, and discharged, in Pursuance of the Power reserved as aforesaid, and they and every of them are hereby removed, displaced, and discharged accordingly.

John Nicholas.

The Other is an Order of the King alone, in these words.

JAMES R.

An Order of the
King 17th October,
1688.

WHEREAS in the Charters, Patents or Grants made to several Cities, Burroughs, and Towns Corporate, a Power is reserved to Us to remove, displace and discharge by Order under Our Signet and sign Manuel, the Mayors, Sheriffs, Recorders, Town-Clerks, Aldermen, Common Council-men, Assistants, Officers, Magistrates, Ministers, Freemen, and other Members of the same. We do accordingly hereby remove, displace and discharge all Mayors, Sheriffs, Recorders, Town-Clerks, Aldermen, Common Council-Men, Assistants, Officers, Magistrates, Ministers, Freemen, and other Members of Our said respective Cities, Burroughs and Towns Corporate, which have or claim such Offices or Places by Charter, Patent or Grant from the late King Our most Dear Brother of ever blessed Memory, or from Us since the Tear One Thousand six Hundred Seventy Nine, except such Cities and Towns in Our Proclamation named, whose Deeds of Surrender are Inrolled, or against whom Judgments in Quo Warranto are entred: And they, and every of them, are hereby removed, displaced, and discharged accordingly, in Pursuance of the Power reserved to Us as aforesaid: whereof All Persons concerned are hereby required to take Notice.

Given at Our Court at Whitehall the 17th Day of October, 1688. in the Fourth year of Our Reign.

By His Majesty's Command.

Sunderland, P.

Now upon these two Orders give me leave to make some few Reflections.

1. Reflection on the
foregoing Orders.

The First shall be, That before this New Project or Invention of Surrendring Charters, which was hatched in King Charles the Second's time) Cities, Burroughs, and Towns Corporate had free Elections of their Mayors, Sheriffs, Aldermen, and all the

the other Governing Members that made up the Constitutive part of their said respective Corporations: This was a Right and Privilege the *People* had taken care *originally* to reserve and secure to themselves; and it has gone down till of late Years from the *first Constitution* of this settled Government: but after that our *Virtuosi* had found out this Trick of Loyalty to enslave the Nation, by voluntary Surrenders, and the Judges had contrived another, under a Legal colour, of seizing of Charters, from those that were resolved to use their Endeavours to preserve and maintain the Glory of their excellent Constitution; then the Crown had the Power reserved to its self, of removing, displacing and discharging all the Magistrates, Ministers, Freemen, and other Members of the same, as it pleased. This was,

1. At the Will and Pleasure of the King in Council.

But this did not give content long; it was look'd upon as too great a Clog and Inconvenience, and too Inglorious for Sovereign Majesty, as giving too publick an Account of his Actions. They flattered the Prerogative with Dr. Brady's clear Demonstration, 'That all the Liberties and Privileges the People [of England] can pretend to, were the Grants and Concessions of the Kings of this Nation, and were derived from the Crown. And Kings may resume their own Grants, as they in their Princely Wisdoms shall think fit and necessary. They would have him more Absolute in himself, than to be obliged to acquaint his Council with what he had a mind to do: tho' the Council was no wise concerned in the Matter, either by way of Advice or Approbation; but only the King was to Publish such a thing to them in Council, as the *French King* doth his Edicts, when he declares, *Tel est nostre plaisir*: Yet it was thought more politick to omit that Course, as making too great a Noise in the Numbers of Surrenders and Judgments of Corporations; and therefore,

Dr. Brady's *Complete History of England*, Preface to the Reader, fo. 1.
Vid. Plato's *Dæmon*, pag. 289.

2. An Absolute Power was reserved to the King alone, by Order under the Royal Signet, and Sign Manuel, to remove, displace and discharge, if he pleased, All the Mayors, Sheriffs, Recorders, Town-Clerks, Aldermen, Common Council-Men, Assistants, Officers, Magistrates, Ministers, Freemen, and other Members, of all the Cities, Burroughs, and Towns Corporate of *England*, so there would be a short end of the ancient State and Frame of the *English*, that is to say, the best constituted Government in the World.

My Second Reflection shall be this, That by the Oaths of their respective Corporations, every Freeman and Member of such Corporation, as well as of *London* (to which the Book particularly relates) is bound to defend and maintain the Liberties, Franchises, and Privileges of such their Corporations.

There are three Ingredients which make up a Freeman (as Dr. Heylin's *Stumbling-Block of Disobedience*, &c. ch. 5. Post- pag. 208.

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Post-Nati, That is to say, 1. *Jus Civitatis*, which did enable a Man to Buy and Sell, and to take Inheritances. 2. *Jus Suffragii*, a Voice in the Passing of Laws, and Election of Officers. And 3. *Jus honoris*, a Capacity of such Offices and Honours, as the State could give him.

Idem, p. 211.

It is a *Fundamental Constitution* of the Realm of *England*, that every Freeman hath a Voice in the Legislative Power of Parliament, and it is an old Rule in Politicks, *quod Omnes tangit, ab Omnibus tractari debet*, and so acknowledged in a Writ of Summons of King *Edward* the First.

Rot. Claus. 23 E. 1.
m. 3. dor.

Therefore how pernicious are the Consequences of voluntary Surrenders!

1. It is a Sin against the Law of Nature, for any Man that is Free by the Constitution, to make himself a voluntary Slave.

2. It is a Sin against the Law of God, for any Man that is under an Oath, to break that Oath, and to Perjure himself, upon any pretence whatsoever.

3. It is a Sin against the Law of the Land, in that it destroys the Natural Right of every free-born Subject of *England*, to make free Election of Members to serve in Parliament.

25 H. 8. c. 21.

4. It is an *abdicating* of our Ancient Constitution, a giving up our selves to be Governed according to Arbitrary, and Despotical will and pleasure, a renouncing of the Antient Laws of this Realm, 'originally established as Laws of the same, by our Own suffrage and free consent, and which we have bound our selves, by long use and custom, to Observe.

*Vid. Bishop Billson's
Christian Subjection,*
3 Pt. 280. Ed. 1586.

In a Word, the People that have been guilty hereof, however they may have flattered themselves, or been flattered by Others, or worse abused by those, that should Preach nothing but sound Doctrine; they have been Treacherous to their God, to their Country, to their own Souls, and to their Posterity, and have as much as in them lay, dissolved 'the Foundation, Freedom, and form of their Common-wealth, which their Ancestors foreprised, when they first consented to have a King.

But how inexcusable were those that gave Judgment upon the Charter of the City of *LONDON*? For a Single and Inferiour Court of Justice to Judge and give Sentence to the Ruin of a Nation, from whom she might have expected her utmost Support and Security; what can be said that will not prove an aggravation of their Crime? Other Men may be impudent and ignorant, but for those of the learned Robe, their being upon the Bench, makes their Fact more Heinous. The Case was elaborately and fully argued before them by Council for the City; they told them how carefull the Law in all Ages had been to preserve Corporations, because of the infinite Mischiefs that would inevitably follow upon their Dissolutions.

Mr. Pollexfen's Argument, Ut Supra.

That even in the hottest and maddest of times, viz. Those of E. 1. E. 2. and R. 2. (when all those seizures and forfeitures were) they were never so Extravagant, as to suppose they had such

such a power to destroy the being of Corporations, much less actually themselves to destroy their Being.

It was represented to them, that such a Judgment would remove us from our Centre, unhinge the whole Frame of this Admirable Government, make it an *Imperium plane Despoticum*, as a certain Reverend Dean has asserted it, and so we should either have no Parliaments at all, that is to say, so chosen by the People as they ought, and of *old times* had been accustomed; or, if any, according to the New Modell'd constitution, I mean, of the Courts Nomination.

Dr. Pierce's Vindication of the Kings Sovereign Rights, &c.

This, I say, and much more than this was told them openly, That to destroy Charters would be in effect to destroy *England*; but it signified nothing with those Reverend Judges, their Superiority on the Bench would suffer no Reasons to weigh with them that came from the Bar; but they proceeded summarily to Judgment against it, contrary to their Oaths as Justices, *to serve the People according to Law* Established; as you will see hereafter; against manifest conviction from the Insuperable Arguments of those that pleaded in its defence, or else they ought to have answered them that they were not so, from point to point *seriatim*, to have satisfied the World, that the City Council, in the grounds on which they went and insisted, were in the wrong, and their numerous Ancient Presidents which they cited, were but little to the purpose; nay, it being a Case of so great a Consequence, they ought at least to have adjourned it into the Exchequer Chamber, there to have had it argued over again at the Bar, and then to have received the Opinion of all the Judges of *England*, and that too *seriatim*, on which to have grounded their Judgments: But nothing of this was done; when as all our Law Books as well as daily Practice, tell us; that in a Case of but five or ten pound a Year concernment, if there arise any difficulty in a point of Law in the Courts below about it, they have adjourned such Case into the Exchequer Chamber, there to have it Solemnly argued and resolved as before is mentioned. And ought not the Inheritance of *London*, which is the greatest Inheritance of the Kingdom, to have had as equal Law? But this reached further, it went to the Irreparable Injury of the Subject as to the *Parliamentary Constitution*. Now the Higher these Men were in Place and Station, the more deservedly Obnoxious they have made themselves to the Law and Justice they have so heinously violated. For if to destroy the Government be not, let them answer what is, *High Treason against the Realm?*

28 H. 8. c. 7.

Glanvil, who was a learned Lawyer, and Chief Justice in Henry the Seconds days, above 500 Years ago, writ a Book of the Common Laws of *England*, which is the Ancientest of any Extant touching that Subject, informs us, that there was then in his time such a thing as *High Treason against the Kingdom*; his Words are these, *Crimen, quod in legibus dicitur Crimen*

Cowels Interpreter. tit. Glanvil.

Glanvil l. 1. c. 2. p. 1.

vid. Sanderson's History of the life of King Charles I. fo. 473.

men læsæ Majestatis, ut de Nece vel seditione personæ Domini Regis vel Regni, &c.

In the Articles of High Treason and other Misdemeanors drawn up by Mr. Solicitor *Herbert*, (our late Chief Justice's Father) in King *Charles* the first's time against the Lord *Kimbolton*, and five Members of the House of Commons, these were two, *viz.*

1. That they had Traiterously endeavoured to subvert the Fundamental Laws and Government of this Kingdom.

5. That they had Traiterously indeavoured to subvert the very Rights and Beings of Parliament.

I cannot imagine what is possible to be said by way of Plea or Excuse in their favour, unless that then the City being pretended to be unruly and tumultuous, affronting the King with relation to his Government, that he had obstructed publick Justice by proroguing the Parliament, &c. There seemed an unavoidable Necessity to take some effectual Course to prevent the ill consequences of such Undutiful and Scandalous practices; and therefore the Judgment they pronounced was not intended by them to be of so high a Nature, as here it is aggravated; it was only to let the King *molliter manus imponere* upon them, till they returned to a sense of their Allegiance and Loyalty, and that this Judgment of theirs was only out of tendernefs and Loyalty to his Person and Government.

*Noy. 182.
Darcy versus Albin.*

The Tryal of the Regicides, p. 213. Printed, 1679.

To this, in short, I answer, Judges are not to go in Judgment according to their pretences of Loyalty, but according to the known and certain Rules of Law, and where they have None to direct them, to pray the Advice and Direction of the Parliament. *If partial Affection by private Discretion do govern publick affairs, there One Mans will (says Noy) One Court of Kings Bench, may become every Mans Misery.*

The King (says my Lord Chief Baron *Bridgman*) should not, nor ought to govern but by the Fundamental Laws of the Land, they that keep within the bounds of the Law are happy, and says he to *Cook* and *Peters*, You that are a Lawyer, know this in point of Law, and You that are a Divine know this in point of Divinity.

2 Inst. 526.

The Laws of the Realm have this Office to guide the Judges, in all Causes that come before them in the ways of right Justice, says my Lord *Cook*, who never yet misguided any Man, that certainly knew them, and truly followed them.

I shall make bold here to offer my Notion of Loyalty, and so submit my self, as to the Truth of it, to every Candid and Ingenuous Reader.

Mirr. de Jus. c. 2. §. 1. p. 115. Id. in English, p. 59.

The word *Loyal* is a Term of Law, and is indifferently applied to Things, and to Persons.

1. As to Things, the Mirrour of Justices tells us, *Action n'est autre chose que loyall demand de son droit.* An Action is nothing else but a lawful demand of a Man's Right. Again,

Again, a Pleader in Courts of Justice *ne mittera en Court faux delays, ne faux Tesmoignes, ne movera, ne profera neaux corruptions, deceipts, mensonges, ne auxi fauxes lies, ne consentera, mes loyalment maintiendra le droit de son Client, cy que il ne chiet per folly, negligence, ne defaut de luy*; that is, he shall put no false dilatories into Court, nor false Witnesses, nor move, nor offer any false Corruptions, Deceits, Leafings, or false Lyes, nor consent to any such, but *loyally*, that is truly according to Law, maintain his Client's Cause, so that it fail not by any folly, negligence, or default in him.

Id. Frensh. c.2. Sect. 7. pag. 122.

2. As to Persons, The Law of *England* is that which makes the King our Liege Lord, and not the *French*, or *Spanish* Kings; and Us his People, and not theirs; and accordingly both Prince and People are mutually Sworn, and were so from the first Original Contract, to the observance and keeping of the Laws which were Established by their own free and voluntary Consents. So that to obey the Commands of the King contrary to Law, is in truth *Disloyalty*, and to disobey such Commands is true *Loyalty*.

For if there be any other Rule or Measure of Obedience than the Law presumes, it will then follow that all the Judges of *England* have for above these 340 years been Sworn to be Disloyal; and that *Disloyalty* grounded on no less Authority than the Declaration and Appointment of both King, Lords, and Commons.

For do not the Judges in the face of God, Angels, and Men, solemnly Swear that they will "well and *legally* Serve our Sovereign Lord the King and his People in the Office of Justice. In the Statute Books Printed in French it is, *que bien et loialment Services a nostre Seigneur le Roy et son People en le Office de Justice, et que loialment conseileres nostre Seigneur le Roy en ses Besoignes*, and that according to Law ye shall Counsel the King in his Business.

Loyalment:

Vid. Oath of the Justices in Rast. Stat. f. 88. 18 E. 3.

But this is not All that is in the Oath, there is a more particular Branch in it which runs thus, *viz. And that ye deny to no Man, [commune Droit] Common Right by the King's Letters, nor none other mans, nor for none other Cause, and in case Any Letters come to You, contraries a la Ley, contrary to the LAW, that ye do nothing by such Letters, but certify the King thereof, and go forth to DO the LAW notwithstanding the said Letters.*

Ibid.

Upon which Oath, *Fortescue*, who (as was before hinted) was Lord Chief Justice *tempore H. 6.* hath this Remark.

Iusticiarius inter cetera jurabit, se Iustitiam ministraturum indifferenter Omnibus hominibus coram eo placitantibus, Inimicis & Amicis, nec sic facere differet, etiamsi Rex per literas suas, aut Ore tenus, contrarium jusserit, i. e. That he shall indifferently minister Justice to All Men, as well foes as friends, that shall have any suit or plea before him; and this he shall not forbear to do, though the King by his Letters, or by express word of mouth, shall command the contrary.

And

Fortescue, de Laudibus Legum Angliz, c. 51. p. 122. b.

Anderf. Cæven-
dishes case, fo. 155.

And therefore it was insisted upon by all the Judges in Q. Eliz. time, that *n'est aucun Offence ou contempt* to her Majesty not to obey her Letters, or Commands, *que fuerant encounter la Ley de Terre, en queux Cafes fuit dit, que Nul est lie de obeyer tiel Commandment*, which were against the Law of the Land, in which Cafes it was said, that None is bound to obey such Commandments, and that if they should obey such Commandments, it would be, *encounter leur Serement, en Offence de Dieu, sa Majestie, le Countrie, & Common-wele*, against their Oath, in Offence to God, her Majesty, the Country, and Commonwealth.

From all which I shall only infer this, that then a Man is a Loyal Subject, and no otherwise ought to be accounted so, but when he acts according to the Law of the Land, for Law is the only Rule and Standard of Loyalty.

Having thus given you my Sentiments of what is the true Signification of Loyalty, which is squaring all our Measures and actions according to LAW in all publick Administrations; I cannot conceive it will be improper here to insert some short Collections I formerly made, out of the Reverend and Learned Dr. Barrow's Sermons, concerning the Properties and Obligations of a Judge, *viz.*

Dr. Barrow's second
Volume of Sermons in
Octavo. The Eighth
Sermon, pag. 42, 43.
Levit. 19. 15.

Jam. 2. 1.
Mat. 22. 16;
1 Tim. 5. 21.

Idem, pag. 43, 44.
Deut. 1. 16.

1. A Judge should be free from all prejudices, and all partial affections; especially from those which are disadvantageous to the party in danger to suffer; such as tempt or incline to condemn him; from ill opinion, and ill will, from anger, envy, revengefulness, contempt, and the like: for he that is possessed with these, is no wise qualified to be a Judge; his eyes are blinded, or distorted, or infected with bad Tinctures, so that he cannot discern what is right, or that he seeth things represented in the wrong place, and under false colours: his mind is discomposed and disturbed, so that he cannot calmly and steadily apprehend or consider the just state of the Case; his will is biased, and strongly propendeth one way, so that he cannot proceed uprightly in a straight and even course: being not indifferently affected, but concerned on one side, he is become a party, or an Adversary, and thence unfit to be a Judge; he hath determined the Cause with himself beforehand, so that no place is left to further discussion or defence; wherefore before such a Judge the best cause will fall, the clearest Innocence shall not preserve from Condemnation. He therefore that will undertake this Office, must first divest himself of all prejudices, must rid himself of all passions, must purify himself from all corrupt inclinations, taking care not to come with a condemning mind, or a lust to punish the obnoxious party; otherwise a just exception lieth against him, and reasonably his Jurisdiction may be declined.

2. A Judge should never proceed in Judgment, without careful examination of the Cause, so as well to understand it. Even those, who out of indispensable Duty, or by a just Power may call

call others to account, are yet obliged to be wary, and never to pass Sentence without due cognizance of the Cause; otherwise they will Judge blindly and rashly; they will either decide wrongly, or so truly, that doing it must be imputed not to their Virtue, but to their Fortune; often they will be mistaken, and 'tis luck that they are not so always; and what plainer Iniquity can there be, than that the reputation or real Interest of any Man should be put to the arbitrement of chance; that he should be defamed, or damnified, not for a certain fault, but from an unhappy lott? As things view'd at a distance appear much different in bigness, shape and colour from what they are in nature and reality; so if we do not look nearly and narrowly, we shall greatly misapprehend the Nature, the Degrees, the right Characters of things, and of persons; then be our pretence to judge never so fair, yet our proceeding is unjust—so that if we would act the Judges part, we must patiently attend to, and heedfully sift the Cause: carefully mind what may be alledged in favour of the party concerned; and scan every Point and Circumstance which may serve to acquit him, or to excuse and extenuate his guilt, or otherwise it is to engage our selves into the Commission of palpable Injustice.

Id. p. 45.

3. A Judge should never pronounce final Sentence, but *ex allegatis & probatis*, upon good Grounds, after certain Proof, and upon full Conviction. Not any slight Conjecture, or thin Surmise; any idle Report, or weak Pretence is sufficient to ground a Condemnation upon. The Case should be irrefragably clear and sure before we determine on the worse side:—

Idem, pag. 46.

Every Accusation should be deemed Null, until both as to Matter of Fact, and in point of Right, it be firmly proved true, *Quod probari non potest, mihi infectum est.* * It is a rule of Equity and Humanity, built upon plain Reason, that rather a nocent person should be permitted to escape, than an Innocent should be constrained to suffer: for the Impunity of the one is but an Inconvenience, the suffering of the other is a wrong; the Punishment of the Guilty, yieldeth only a remote probable Benefit; the affliction of the blameless, involveth a near certain Mischief: wherefore it is more Prudent and more Righteous to absolve a Man, of whose guilt there are probable Arguments, than to Condemn any Man upon bare Suspicions.— It is indeed not fair Judgment, but meer Calumny to Condemn a Man, before he doth by sufficient proof appear Guilty.

De oculis Cordis alieni temere judicare iniquum est, & cum cujus non videntur opera nisi bona, peccatum est ex suspitione reprehendere, Joh. 3. 1 Ep. 1. Bern.

* Idem, pag. 47.

4. There are divers Causes wholly exempted from our Judgment, and which in no case we must pretend to meddle with; such as are the Secret Thoughts, Affections, and Purposes of Men, not expressed by plain words, nor declared by overt acts; for a Capacity of Judging, doth ever suppose a Power of Cognizance; and it being impossible for us to reach the knowledge of those things, we cannot therefore pretend to Judge of them.

Idem, pag. 48.

Idem, pag. 49.

Greg. Naz. Orat. 26.

Idem, pag. 51.

Idem, pag. 53.

God himself (as some
of the Fathers observe)
bath shewed us an Ex-
ample of this Equity,
Disce dam igitur &
videbo. &c.
Gen. 18. 21.

Καὶ τοὺς πατέρας ἡμεῖς
ὅτι ἀνθρώπων οὐκ ἐν-
ὧν τῷ πονηρίᾳ ἂν
ὁμοῦ ἐστὶν κατὰ θεὸν
δικαιοσύνη, διδασκόντων
ἡμᾶς ἀναμένειν τὸν
ἀπολογισμὸν τῷ κυρίῳ.
Theod. Ep. 119.
& P. Pelag. ad Eliam.

Idem, pag. 54.

5. It is not commonly allowable to Judge concerning the Estate (either present or final) of our Neighbour in regard to God; so as to take him for a wicked Man, or to denounce Reprobation upon him: πολλὰ δὲ γράφονται καὶ παθεῖν πρὶν ἄλλω κατα-
νῶναι δυνάσθαι: For the state of Men is not so much determined by single Actions, as by a Body of Practice, or by a long course and tenor of Life, compounded and complicated of Actions in number and kind unconceivably various.

6. A Judge should not undertake to proceed against any Man, without warning and citing him to appear, or without affording him competent liberty and opportunity to defend and justify himself. Judgment should not be administered clancularly, in dark Corners, but in open Court; not suspiciously, in a muttering or whispering way; but frankly, with a clear and audible Voice; not upon surprise, but with allowance of leisure and advice, that the Party may be able to apprehend his Case, and manage his Plea, for his best defence; for it may justly be presumed, that as he is most concerned, so he is best acquainted with his own Proceedings, and may alledge Reasons for them, which no Man can so well perceive as himself; it is therefore fit that he should be heard, before he is Condemned, that he may not suffer wrong; at least that he may be convinced that he doth not, and that our Proceeding may be cleared from Misprision; that also the World may be satisfied of Justice being done; and that likewise false Accusers may be liable to due Shame and Chastisement. The End of Justice, we may consider, is not to Condemn, nor to work Mischief to any one; but rather, so far as may be, to acquit and prevent Evil to all; at least it aimeth to clear the Truth, and state the Case indifferently; wherefore 'tis just, that all Advantage that well can be, should be afforded to the obnoxious Party for his Justification and Deliverance; at least that he be not denied equal Advantage with his Persecutors; Humanity would allow him some favour; the most rigorous Justice cannot refuse him leave to contest his Cause upon equal terms: wherefore 'tis fit that he should be acquainted with his Case, that competent time and means should be afforded him, to prepare for his Defence, that his Plea should receive, if not a favourable, yet a free Audience: the contrary practice is indeed rather Backbiting, whispering, supplanting; or Sycophantry, than fair and lawful Judging.

7. A Judge is obliged to conform all his Determinations to the settled rules of Judgment, so as never to Condemn any Man for acting that, which is enjoined, or approved, or permitted by them; he must not Pronounce according to his private Fancy, or particular Affection, but according to the standing Laws; which as they are the only certain Rules of Moral Action, the only Grounds of Obligation, the only Standards of Guilt and Innocence, so in reason they should be the sole Measures of Judging; he that proceedeth otherwise, is an Arbitrary

Arbitrary and a slippery Judge; he encroacheth upon the Right and Liberty of those with whom he medleth, pronouncing them Guilty, whom God and Reason do proclaim Blameless.

8. A Judge should be a Person of good Knowledge and Ability; well versed and skilfull in the Laws concerning matters under Debate; endued with good measure of Reason, enabling him as to sift and canvas matter of Fact, so to compare them accurately with the rules of Right; for nothing is more absurd than an Ignorant, and unskilfull Judge. Men therefore of weak Capacity, of mean Education, of small Experience, are qualified to judge in few Cases, most things being placed above their reach, such never should presume to censure actions, the worth or moral quality whereof, depend upon the stating and resolution of abstruse, intricate, or subtle Questions. The decision of Controversies in Religion, Mysteries of Policy, or reasons of State, is to be reserved to those, who by study and experience have attained peculiar faculties to do it respectively.

Ἐκαστος κρίνει κα-
λῶς ἀγινώσκων καὶ
τῶτων ἐστὶν ἀγαθὸς
κακῆς. *Arist. Eth.*
l. 3.

Idem. p. 57.

9. It is proper for a Judge not to make himself an Accuser; nor to seek for Misdemeanors; not to draw more causes under his cognizance, than are in course presented before him: He should rather judge as out of constraint, than of choice; rather as sorry to find a necessity, than glad to snatch an Occasion of condemning offenders.

Idem. p. 58:

*Sine dubio in omnibus
statim accusationibus hoc
agendum est, ne ad eas
libenter descendisse vi-
deamur. Quintil.*

10. He that pretendeth to judge others, should himself be Innocent; under no Indictment, and not liable to Condemnation; Is it not very improper for a Criminal, for one who is not only in truth, and in his own conscience guilty, but who standeth actually convicted of heinous offences, to sit upon the Bench, determining about the deeds and the states of others?

Idem. p. 59.

*Cum ipse sis reus, in
alterum audes ferre
sententiam?*

Optat. 2.

11. It is the property of a good Judge to proceed with great Moderation, Equity, Candor, and Mildness; as a general Friend, a Friend to Justice, to the Publick, to Mankind, to the party Impeached; as a friend to Justice, he should be careful that the Defendant receive no wrong in his Credit, or Interest; as a lover of the publick, he should wish that no Offences or Scandals be found; out of humanity he should desire, that no man may incur the blemish of guilt, or pain of suffering; he should tender the parties case as compassionate, and desire that he may be delivered from the evil threatening him; this should render him willing to acquit, and free the party, apt to apprehend and interpret all things favourably, ready to excuse and mollify the business what he can; far from picking faults out of obscure surmises, or slender pretences, from aggravating the miscarriages that are detected, from stretching the blame farther than it will reach of it self, or making the case worse then it needs must be, from pronouncing a harsh or heavy Sentence thereon. He should always be of Council

Idem. p. 60.

Idem. p. 61.

A General Preface.

to the defendant, pleading his cause so far as Truth and Equity will permit; putting himself in his case, and thence no wise dealing with him more rigourously than he, according to impartial Judgment, should in the like case deem it equal that himself should be dealt with: In fine, however the matter in the result appear to stand, he should avoid Rigour and Extremity, he should exercise Clemency and Mercy.

*Dr. Barrow's 2d.
Vol. Oct. 4th Sermon
p. 141.*

It belongeth to the Majesty of Publick Justice to be Bold, Blunt, Severe; little regarding the concerns or Passions of particular Persons, in comparison to the Publick Wellfare.

Idem. p. 149.

A Judge must not lay on the most Criminal Persons more blame, or contumely than the Case will bear, or then serveth the Designs of Justice.

THE

A General History

of the British Empire
from the first Settlements
to the present Time

By JOHN HANCOCK, Esq.
of the Middle Temple

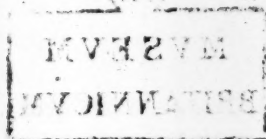


The Penalty of an
Offendor.

And in case ye be from henceforth found in Default in any of the Points aforesaid, ye shall be at the King's Will of Body, Lands and Goods, thereof to be done as shall please him. As God you Help and all Saints.

*2 Chron. Ch. 19:
Vers. 6, 7.*

And Jehosaphat said to the Judges, Take heed what ye do; for you judge not for Man, but for the Lord, who is with you in the Judgment. Wherefore now let the fear of the Lord be upon you, take heed, and do it: for there is no Iniquity with the Lord our God, nor respect of Persons, nor taking of Gifts.



FINIS.

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